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Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Sixteenth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the Rights of the Child: Australia

1. The Committee considered the initial report of Australia (CRC/C/8/Add.31) at its 403rd to 405th meetings (CRC/C/SR.403-405) on 24 and 25 September 1997, and adopted* the following concluding observations:

A. Introduction

2. The Committee expresses its appreciation to the State party for its extensively detailed report, which has been prepared in full conformity with the Committee's guidelines, and for the submission of written replies to its list of issues (CRC/C/Q/AUS/1). The Committee notes with satisfaction the constructive and open dialogue it had with the delegation of the State party, and the detailed replies it received from the delegation during the dialogue. The Committee also notes the supplementary information provided by the delegation during and following the consideration of the report. The Committee regrets, however, that the State party did not include full information in its report on the External Territories that are administered by it. The Committee notes that article 2 of the Convention requires States parties to ensure the implementation of the Convention for areas under their jurisdiction, which therefore includes the obligation to report on progress achieved in all its territories.

B. Positive aspects

3. The Committee appreciates the State party's firm commitment to adopting measures for the implementation of the rights of the child as recognized in the

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* At the 426th meeting, held on 10 October 1997.

Convention. The Committee notes specifically the wide range of welfare services for the benefit of children and their parents, the provision of universal and free education and the advanced health system.

4. The Committee notes the efforts by the State party in the field of law reform. The Committee welcomes the recent amendments to the Family Law Act, 1975 and the Crimes (Child Sex Tourism) Amendment Act, 1994.

5. The Committee welcomes the intention of the State party to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

6. Noting the long-standing efforts made by the State party in the field of international cooperation, the Committee would like to encourage the State party to achieve the 0.7 per cent of GDP target for international assistance to developing countries.

C. Principal subjects of concern

7. The Committee is concerned that although the Convention on the Rights of the Child has been declared a relevant international instrument under the Human Rights and Equal Opportunity Act, 1986, which enables the Human Rights and Equal Opportunity Commission to refer to the Convention when it is considering complaints, this does not give rise to legitimate expectations that an administrative decision will be made in conformity with the requirements of that instrument. The Committee is also concerned that there is no right of citizens to launch complaints in the local courts on the basis of the Convention on the Rights of the Child.

8. The Committee notes with concern the reservation made by the State party to article 37 (c) of the Convention. The Committee notes that this reservation might impede the full implementation of the Convention.

9. The Committee is concerned about the absence of a comprehensive policy for children at the federal level. It is also concerned by the lack of monitoring mechanisms at federal and local levels. Such mechanisms are of essential importance for the evaluation and promotion of the development of policies and programmes for the benefit of children. Disparities between the different states' legislation and practices, including budgetary allocations, are of concern to the Committee.

10. The Committee notes that the Convention and its principles are not generally known to the public, although the notion of rights is. The Committee regrets that there seems to be lack of adequate understanding in some quarters of the community of the principles of the Convention, as well as its holistic and interrelated approach, and the importance that the Convention places on the role of the family.

11. The Committee also expresses its concern that employment legislation on the federal level, as well as in all the states, does not specify minimum age(s) below which children are not allowed to be employed. The law also does not prohibit the employment of children who are still in the compulsory

education. The Committee is deeply concerned that the minimum age of criminal responsibility is generally set at the very low level of 7 to 10 years, depending upon the state.

12. The Committee is concerned that the general principles of the Convention, in particular those related to non-discrimination (art. 2) and the respect for the views of the child (art. 12) are not being fully applied.

13. While noting the information provided by the delegation of the State party on a number of programmes to raise health standards for Aboriginal and Torres Strait Islander children and the State party's intention to start a two-year anti-racism campaign, the Committee is nonetheless concerned about the special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living and levels of services, particularly in education and health.

14. The Committee is concerned that in some instances, children can be deprived of their citizenship in situations where one of their parents loses his/her citizenship.

15. The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28 (2), 37 (a), (c), and 39. The Committee is also concerned about the existence of child abuse and violence within the family.

16. The Committee is also concerned by local legislation that allows the local police to remove children and young people congregating, which is an infringement on children's civil rights, including the right to assembly.

17. The Committee is concerned that women working in the private sector are not systematically entitled to maternity leave, which could result in different treatment between children of State employees and those working in other sectors.

18. While noting the support services that are provided to homeless children, including housing, education and health services, the Committee remains concerned at the spread of homelessness amongst young people. The Committee is worried that this puts children at risk of involvement in prostitution, drug abuse, pornography, or other forms of delinquency and economic exploitation. The incidence of suicide among young people is an additional cause of concern to the Committee.

19. The Committee is concerned about the continued practice of female genital mutilation in some communities, and that there is no legislation prohibiting it in any of the states.

20. The Committee is concerned about the treatment of asylum seekers and refugees and their children, and their placement in detention centres.

21. The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the Committee, particularly in the light of the principles and provisions of the Convention and other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system, and that there is a tendency normally to refuse applications for bail for them. The Committee is particularly concerned at the enactment of new legislation in two states, where a high percentage of Aboriginal people live, which provides for mandatory detention and punitive measures of juveniles, thus resulting in a high percentage of Aboriginal juveniles in detention.

D. Suggestions and recommendations

23. In the light of the Vienna Declaration and Programme of Action of 1993, the Committee encourages the State party to review its reservation to article 37 (c) with a view to its withdrawal. The Committee emphasizes that article 37 (c) allows for exemptions from the need to separate children deprived of their liberty from adults when that is in the best interests of the child.

24. The Committee recommends that the State party create a federal body responsible for drawing up programmes and policies for the implementation of the Convention on the Rights of the Child, and monitoring their implementation. The Committee suggests that cooperation in the field of the rights of the child between the authorities and non-governmental organizations as well as Aboriginal and Torres Strait Islander communities should also be further strengthened.

25. The Committee encourages the State party to allocate special funds in its international cooperation programmes and schemes to children. The Committee also encourages the State party to use the principles and provisions of the Convention as a framework for its programme of international development assistance.

26. The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment in private schools and at home. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention. The Committee also believes that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. Further measures should be taken with a view to ensuring the physical and psychological recovery and social reintegration of the victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention.

27. The Committee recommends that awareness-raising campaigns on the Convention on the Rights of the Child be conducted, with a particular focus on its general principles and on the importance the Convention places on the role of the family. The Committee suggests that the Convention be disseminated also in languages that are used by Aboriginals and Torres Strait Islanders, and by persons from non-English-speaking backgrounds. The Committee also suggests that the rights of the child be incorporated in school curricula. It further recommends that the Convention be incorporated in the training provided to law enforcement officials, judicial personnel, teachers, social workers, care givers and medical personnel.

28. The Committee believes that there is a need for an awareness-raising campaign on the right of the child to participate and express his/her views, in line with article 12 of the Convention. The Committee suggests that special efforts be made to educate parents about the importance of children's participation, and of dialogue between parents and children. The Committee also recommends that training be carried out to enhance the ability of specialists, especially care givers and those involved in the juvenile justice system, to solicit the views of the child, and help the child express these views.

29. The Committee recommends that specific minimum age(s) be set for employment of children at all levels of government. The Committee suggests that there is also a need for clear and consistent regulations in all the states on maximum allowed work hours for working children who are above the minimum employment age. The Committee also encourages the State party to consider ratifying ILO Convention No. 138 concerning minimum age for employment. While acknowledging the fact that the federal Government is planning to harmonize the age of criminal liability and raise it in all the states to 10 years, the Committee believes that this age is still too low.

30. The Committee recommends that legislation and policy reform be introduced to guarantee that children of asylum seekers and refugees are reunified with their parents in a speedy manner. The Committee also recommends that no child be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s).

31. The Committee encourages the State party to review its legislation and make paid maternity leave mandatory for employers in all sectors, in the light of the principle of the best interests of the child and articles 18 (3) and 24 (2) of the Convention.

32. The Committee encourages the State party to take further steps to raise the standards of health and education of disadvantaged groups, particularly Aboriginals, Torres Strait Islanders, new immigrants, and children living in rural and remote areas. The Committee is also of the view that there is a need for measures to address the causes of the high rate of incarceration of Aboriginal and Torres Strait Islanders children. It further suggests that research be continued to identify the reasons behind this disproportionately high rate, including investigation into the possibility that attitudes of law enforcement officers towards these children because of their ethnic origin may be contributing factors.

33. The Committee recommends that further research be carried out to identify the causes of the spread of homelessness, particularly among young persons and children, including, inter alia, the socio-economic background of the child and his/her family, and to identify any link between homelessness and child abuse, including sexual abuse, child prostitution, child pornography, and trafficking in children. The Committee also encourages the State party to adopt further policies of poverty alleviation, and to further strengthen the support services that it provides to homeless children.

34. The Committee recommends that specific laws be enacted to prohibit the practice of female genital mutilation and to ensure adequate implementation of the legislation. The Committee also recommends that further awareness-raising campaigns be conducted, in cooperation with the different communities, to sensitize them about the dangers and harm that result from this practice.

35. Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial report and written replies presented by the State party be made widely available to the public at large and that the reports be published, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

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